Cr.MMO No.73 of 2007.

26.10.2007. Present: Mr. Y.P. Sood, Advocate, for the petitioner.

Mr. Navlesh Verma, Advocate, for the respondent.

While disposing of a petition filed under Section 125 of the Code of Criminal Procedure by the petitioner against the respondent vide judgment dated 24th December, 2005, the learned Additional Chief Judicial Magistrate, Court No.2, Shimla granted maintenance at the rate of Rs.1,000/- per month in favour of the petitioner from the date of the order. The reason as to why the aforesaid maintenance allowance was to become effective from the date of the passing of the order was that, pursuant to an agreement arrived at between the respondent and his erstwhile wife (mother of the petitioner) earlier the petitioner was getting Rs.700/- per month as maintenance from the respondent.

The petitioner, however, challenged the aforesaid judgment in Criminal Revision No.17-S/10 of 2007/06 before the learned Additional Sessions Judge, Fast Track Court, Shimla contending inter alia that she should have been granted maintenance at the higher rate and that in any event the maintenance order should have become operational not from the date of passing of the judgment by the learned Additional Chief Judicial Magistrate but from the date of the presentation of the petition. The learned Additional Sessions Judge vide the impugned judgment dated 28th May, 2007, however, dismissed the revision petition of the petitioner. While

dismissing the revision petition, he observed that the revision petition apart from being meritless was mala fide. He also burdened the petitioner with costs assessed at Rs.2,000/-.

I have heard the learned counsel for the parties. I have also perused the impugned judgment. In my considered opinion, the learned Additional Chief Judicial Magistrate was correct in assessing Rs.1,000/- as the monthly maintenance allowance which he had awarded in favour of the petitioner, looking to the need of the petitioner as well as the paying capacity of the respondent linked with his monthly income. He was also correct in operationalising monthly allowance from the date of the passing of the order because undoubtedly the petitioner had been receiving Rs.700/- per month from the respondent by virtue of an agreement which had been arrived at earlier between the respondent and the petitioner's mother resulting in the dissolution of their marriage by divorce and also whereby respondent had paid Rs.5 lacs to the petitioner's mother as a one time settlement. In that view of the matter, therefore, the learned Additional Sessions Judge was correct in not interfering with the judgment of the learned Additional Chief Judicial Magistrate.

However, I feel that there was no warrant for the learned revisional Court to have attributed mala fides to the petitioner in preferring the revision petition before him. The facts of the case do suggest that the petitioner without any element of mala fide had in normal course taken up the revision petition before the learned revisional Court wanting the

enhancement of the maintenance allowance. The desire to get more cannot be treated as, or equated with mala fides. Also the learned revisional Court should not have burdened the petitioner with costs while dismissing the revision petition because in the facts and circumstances of this case, no accusing finger could be raised towards the petitioner warranting the imposition of costs against her.

For the foregoing reasons, even while upholding the judgment impugned in this petition on merits, I order that the observation attributing mala fides to the petitioner by the learned revisional Court in the impugned judgment shall be expunged. I also set aside that portion of the impugned judgment whereby the petitioner was burdened with costs of Rs.2,000/-.

The petition is dismissed.

26th October, 2007. (V.K. Gupta), C.J.
(tr)